

What is Region VIII's Bottom Line?

The federal water quality standards regulation at 40 CFR 131.12 establishes certain minimum requirements applicable to state anti-degradation programs (see Appendix 1). All EPA Region VIII state anti-degradation policies and implementation procedures must be consistent with these minimum federal regulatory requirements.

In general, the primary federal anti-degradation requirement that has not yet been fully addressed by Region VIII states is development (or further refinement) of anti-degradation implementation procedures. Because EPA Region VIII must ensure that such state anti-degradation procedures are sufficiently developed to promote effective implementation, below are listed the issues that must be addressed and clearly resolved by such procedures to obtain EPA Region VIII approval.

The Region believes that identifying these “bottom line” issues will assist states and tribes by providing clear direction regarding the questions that must be resolved by state anti-degradation procedures. For each of the issues, there is a range of approaches that would be acceptable to the Region. The approach that EPA Region VIII recommends is incorporated into the model implementation procedure found in Chapter 2. To minimize the potential for Regional disapproval of a state anti-degradation procedure, EPA Region VIII encourages states that are interested in deviating from the Region’s recommended approach to work closely with the Region at the staff level throughout the development process. EPA Region VIII recommends that states base their implementation procedures on the model procedure included in Chapter 2.

In summary, EPA Region VIII will review and approve state anti-degradation policies and procedures provided that they are *consistent with federal anti-degradation requirements* and they establish clear and reasonable procedures and guidelines that will promote consistent implementation on *each* of the issues listed in this chapter.

***Because EPA Region VIII must ensure that such state anti-degradation procedures are sufficiently developed to promote effective implementation, below are listed the issues that must be addressed and clearly resolved by such procedures to obtain EPA Region VIII approval.***

## **What are the issues that must be addressed?**

### General Issues Under All Three Tiers

- 1) What activities or types of activities are subject to antidegradation review requirements?<sup>1</sup>
- 2) How will public participation and intergovernmental coordination be achieved?
- 3) What specific items will be addressed in the public notices associated with antidegradation review preliminary decisions?
- 4) How will antidegradation review findings be documented?
- 5) What information is/may be required of the project applicant?<sup>2</sup>

### Tier 3 Issues

- 6) What are the qualification requirements and procedures for ONRW or tier 3 designation?
- 7) What are the procedures by which the public can nominate a specific waterbody for ONRW designation?
- 8) What requirements apply to proposed new or expanded sources to ONRWs (state/tribal procedures must address both sources located on upstream segments and sources directly affecting ONRW segments)?
- 9) What types of limited and temporary impacts to ONRWs, if any, may be authorized, and what guidelines will be applied to identify the activities resulting in, or not resulting in, such impacts?

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<sup>1</sup> At a minimum, Region VIII states must establish antidegradation implementation procedures that require completion of an antidegradation review for all currently regulated activities (see definition of “regulated activity” in Chapter 2). “Antidegradation reviews” are conducted under all three tiers of antidegradation, although the level of review required depends upon which tiers apply and other factors. States are encouraged to apply antidegradation broadly to address the variety of actions that may degrade water quality (i.e., point and nonpoint sources).

<sup>2</sup> This is an issue that should be addressed separately for each tier of antidegradation.

## Tier 2 Issues

- 10) What criteria will be used to identify high quality waters (e.g., will a waterbody-by-waterbody or parameter-by-parameter approach be used)?
- 11) What process will be followed to identify high quality waters (e.g., will such decisions be made in advance via rulemaking or on an ad hoc basis once an activity is proposed)?
- 12) How does the state define the terms “degradation” or “significant degradation” and how will this definition be applied in identifying the proposed activities that will be subject to further tier 2 review?
- 13) In assessing the degradation that will result from one or more proposed activities, how will cumulative effects be addressed?
- 14) What are the minimum requirements applicable to the applicant’s evaluation of alternatives to allowing the lower water quality?
- 15) What criteria will the state use to determine whether reasonable non-degrading or less-degrading alternatives are available?
- 16) What process/criteria will the state use to conclude that, in allowing lower water quality, existing uses will be protected fully?
- 17) How will proposed activities that provide “important social or economic development” be identified?
- 18) How will it be determined, prior to allowing degradation, that the highest statutory and regulatory requirements for all point sources and all cost-effective and reasonable best management practices for nonpoint sources have been achieved?

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<sup>1</sup> Region VIII states must, at a minimum, establish an ad hoc mechanism for identification of high quality waters to allow for consideration of new water quality data submitted by the project applicant and to address improvements in water quality that may occur between triennial reviews. Supplementing such an ad hoc mechanism with a “designational” approach that is subject to rulemaking requirements is optional.

Tier 1 Issues

- 19) How will existing uses that have more stringent protection requirements than currently designated uses be identified and protected (as required by 40 CFR 131.12(a)(1))?
- 20) What process/criteria will the state use to conclude that existing uses will be protected fully (e.g., will the state establish a rebuttable presumption that protecting designated uses will also protect existing uses)?
- 21) What approaches or guidelines will be used to protect existing uses from impacts that may not be directly addressed by the applicable water quality criteria?